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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 250

BARTON W. FREELAND, ET AL.,

Petitioners,

versus

SUN OIL COMPANY and CITIES SERVICE OIL COMPANY; SOHIO PETROLEUM COMPANY, Intervenor,

Respondents.

BRIEF OF RESPONDENTS OPPOSING PLAINTIFFS' PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

CULLEN R. LISKOW,
Pioneer Building,
Lake Charles, Louisiana;

AUSTIN W. LEWIS,
Pioneer Building,
Lake Charles, Louisiana,
Attorneys for Respondents.

Montgomery & Co., The Brief Shop & Co., A Div. (Charter) of N. O., La.

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May It Please the Court:

This brief is being filed by Respondents pursuant to Rule 24 of the Revised Rules opposing Plaintiffs' Petition for Writ of Certiorari and to point up grounds why the cause should not be reviewed by this Court.

The opinion of the Court of Appeals and the record clearly disclose that the only thing actually involved in this case was a private dispute between a lessor and lessee under an oil, gas and mineral lease of Louisiana lands; the real issue relating only to royalties on gas produced by the lessee.

Obviously there was no Federal question at issue; there is no conflict in decisions of the Federal Courts; there is no point of general public interest; and certainly the case does not present any other question along the lines of those mentioned in Rule 19 of the Rules of this Court. And the Petition fails utterly to point out any "special and important reasons" for granting the writ.

The unfounded allegations of the Petition cannot bring the case within any of these requirements of the Rules.

The assertions under the heading "Questions Presented" and particularly under number (1) are not only confusing but foreign to any issue that was before the Court when the case was tried. The reference to income taxes in that paragraph is without any meaning whatever unless it was intended to give the erroneous impression that Federal income taxes are here involved so this Court might find interest in the problem. Whatever the purpose of the phrase, there is nothing in this case that has anything whatsoever to do with the payment of income taxes.

And there certainly is nothing in the case to support the earlier part of the same paragraph of Plaintiffs' Petition saying that the question presented is whether an oil

company lessee can oblige the landowner to use a portion of his royalties to pay the cost of acquiring and operating a plant for the extraction of liquid hydrocarbons as part of a recycling program; the question presented rather was to determine "the market value at the well of 1 8th of the gas" to meet the requirements of the express language of the royalty clause in the applicable leases providing:

> "The royalties to be paid by Lessee are: * * * (b) on gas, including casinghead gas or other gaseous substance, produced from said land and (1) sold or *used* off the premises *or in the manufacture of gasoline or other products therefrom, the market value at the well of one-eighth of the gas so* sold or *used*, provided that on (2) gas sold at the wells the royalty shall be one-eighth of the amount realized from such sale * * *." (Italics added.)

The persistent assertions of Plaintiffs' Petition that the royalty owners have been charged with Respondents' costs and particularly given as "Reasons for Granting the Writ" would not serve that purpose even if they were supported by the record. But they are far afield of the issues that were submitted to and decided by the Courts below.

The undisputed facts are that the gas produced by Respondents as Lessees is processed under an arm's length contract between them and a plant built, owned and operated by a third party corporation; Respondents have no interest in the processing plant or any profits that might be derived from it. All the gas processed in that plant bears the same processing charge and Respondents bear their proportionate part thereof; the net represents the

value of the liquid hydrocarbons in the gas—the value of that gas "at the well" from which it is produced. And the royalty owners receive their royalties on that gas at the same "market value at the well" received by Respondents for their share of the production.

The suggestions that Respondents are endeavoring to impose a part of the recycling costs on the royalty owners without their consent are also without any foundation whatsoever; and are mentioned specifically in order to point up that they are unqualifiedly denied by the record. For neither the processing plant nor the royalty owners have borne any part of the costs of the recycling program; all costs for that separate operation have been and are being borne by Respondents alone.

Plaintiffs' Petition is also grossly in error when it claims that the Louisiana decisions do not support a deduction of the cost of removal of liquid hydrocarbons in arriving at values for the payment of royalties. In *Coyle v. Louisiana Gas & Fuel Company*, 175 La. 990, 144 So. 737, and in *Crichton v. Standard Oil Company of Louisiana*, 178 La. 57, 150 So. 668, and more positively in *Wall v. United Gas Public Service Company*, 1934, 179 La. 908, 152 So. 561, the Supreme Court of Louisiana held that under a contract like the ones that were before the Courts in this case, the royalty had to bear its proportionate part of the cost of extracting the liquid hydrocarbons; and those cases, having determined the legal rule in Louisiana, well support the decision of the Court of Appeals here in determining the right under the contracts to charge a fair amount for the cost of removing the liquid hydrocarbons from the gas in fixing the value of

those hydrocarbons as the value of the gas at the well for royalty-paying purposes.

And the Court of Appeals found, as will readily be seen from the last few paragraphs of its opinion, that the amount charged was not shown to have been unreasonable or subject to complaint on any other ground; that as the Lower Court had determined this issue of fact correctly, there was nothing justifying a reversal of that decision in the case.

And there certainly is nothing justifying this Court granting a writ to review a case involving only a private contractual dispute between parties to a mineral lease and merely because the Petitioners are dissatisfied with the decision of the Lower Courts against them.

Respectfully submitted,

CULLEN R. LISKOW,
Pioneer Building,
Lake Charles, Louisiana;

AUSTIN W. LEWIS,
Pioneer Building,
Lake Charles, Louisiana.
Attorneys for Respondents.